

## REMARKS

Upon entry of the foregoing Amendment, claims 1-18 are pending in the application. Claims 1-11 have been amended. No claims have been cancelled. Claims 12-18 have been newly added. Applicant believes that this Amendment does not add new matter. In view of the foregoing Amendment and the following Remarks, allowance of all the pending claims is requested.

### CLAIM OBJECTIONS

The Examiner has objected to claim 5 because of alleged informalities. Without acknowledging the propriety of the alleged basis for the objection, Applicants note that claim 5 has been amended as indicated above, and that amended claim 5 fully addresses the objection that the Examiner has raised. Accordingly, Applicants request that the Examiner withdraw this objection to claim 5.

### REJECTION UNDER 35 U.S.C. § 103

#### A. CLAIMS 1-9 AND 11

The Examiner has rejected claims 1-9 and 11 under 35 U.S.C. § 103 as allegedly being unpatentable over U.S. Patent No. 7,069,310 to Bartholomew ("Bartholomew") in view of U.S. Patent 7,143,089 to Petras et al. ("Petras"). This rejection is improper and should be withdrawn for at least the reason that the references relied upon, either alone or in combination, fail to disclose, teach, or suggest each and every feature of the claimed invention.

More particularly, Bartholomew and Petras, either alone or in combination, fail to disclose, teach, or suggest at least the feature of a "remote content review/control site allowing a reviewing authority that operates the remote content review/control site to . . . view a real-time stream of each multimedia work in the catalog, wherein the reviewing authority must approve each multimedia work made available for public access," as recited in independent claim 1, for example. Although the Examiner acknowledges that "Bartholomew does not further disclose a remote content review/control site," the Examiner generally relies

upon Petras as disclosing the “remote content review/control site.” *See, e.g.,* Office Action, pages 3-4.

However, in rejecting independent claims 1, 5, and 9, the Examiner has failed to specifically address the features relating to allowing a reviewer or a reviewing authority to “view” the various works submitted for public access distribution. *See* Office Action, pages 3-8. As such, the rejection is improper for at least this reason, in that even if every assertion of the Examiner’s were assumed to be correct, which Applicants do not concede, the Examiner would still have failed to demonstrate that the references relied upon, either alone or in combination, disclose, teach, or suggest each and every feature of the claimed invention.

Furthermore, in addition to the deficiency of the rejection as indicated above, to the extent that Petras describes a web site that includes a “content-review process” (col. 32, lines 37 et seq.), the “content-review” process still fails to disclose, teach, or suggest each and every feature of the “remote content review/control site” recited in independent claim 1. For example, independent claim 1 further recites that “a reviewing authority that operates the remote content review/control site [can] . . . view a real-time stream of each multimedia work in the catalog.” However, the “content-review” process described in Petras only relates to editing and approving text in a database. In particular, Petras characterizes the “content-review” process as “ensur[ing] that there are no ‘nonsense’ Subjects in the database – that is, Subjects composed of randomly typed characters or nonsense words” (col. 32, lines 49-56). Thus, for at least the reason that Petras does not disclose, teach, or suggest that the “content-review” process described therein can be used to view real-time streams of multimedia works, the rejection is improper and should be withdrawn.

Further still, Petras does not disclose, teach, or suggest that the “content-review” process described therein requires each subject to be approved prior to being made available to publication. Although Petras does state that “[a]ll Subjects added . . . are reviewed and approved by a Managing Member before publication,” Petras includes the important caveat that “Sponsors are exempt from the content-review process” (col. 31, line 38 – col. 32, line 7). In contrast, independent claim 1 expressly recites that “the reviewing authority must approve each multimedia work made available for public access,” an important feature in the context of

federal and local regulations governing public access programming. See Background of Applicants' Specification. As such, for at least the reason that Petras specifically states that content that certain categories of users provide are exempt from the review process, Petras fails to disclose, teach, or suggest at least the feature of a "remote content review/control site" in which a "reviewing authority must approve each multimedia work made available for public access," as recited in independent claim 1, for example. The rejection is further improper and should be withdrawn for at least this reason.

Accordingly, for at least the foregoing reasons, Bartholomew and Petras, either alone or in combination, fail to disclose, teach, or suggest each and every feature of independent claim 1. The rejection is therefore improper and should be withdrawn.

Independent claims 5 and 9 include features similar to those set forth in independent claim 1. Dependent claims 2-4, 6-8, and 11 depend from and add features to one of independent claims 1, 5, and 9. Thus, the rejection of these claims is likewise improper and should be withdrawn for at least the same reasons.

Furthermore, Applicants hereby traverse the Examiner's invocation of Official Notice in regards to dependent claims 4 and 8. See Office Action, page 9. The Examiner has failed to identify any specific disclosure, teaching, or suggestion in Bartholomew or Petras, or any other reference, which would indicate that the features recited therein are well known. In particular, the Examiner's allegation that "the AVI digital format was well known to be a standard digital format at the time of the invention" fails to account for the entire context of the claimed invention. Specifically, dependent claims 4 and 8 incorporate the features of their respective parent claims, and as such, the Examiner must establish that it would have been well known to maintain a central library of multimedia works that one or more users have submitted for public access distribution in the AVI digital format, not merely that the AVI digital format itself was well known.

As such, because the Examiner may only "take [Official] notice of facts beyond the record which . . . are capable of such instant and unquestionable demonstration as to defy dispute," "[a]ssertions of technical facts in areas of esoteric technology must always be supported by citation to some reference work recognized as standard in the pertinent art," and

"[a]llegations concerning specific 'knowledge' of the prior art, which might be peculiar to a particular art should also be supported." *In re Ahlert*, 424 F.2d 1088, 1091 (C.C.P.A. 1970) (emphasis added). Accordingly, for at least the foregoing reasons, and pursuant to the requirements of 37 C.F.R. § 1.104(c), the Examiner must provide documentary evidence in the next Office Action if the Examiner is to maintain the rejection of dependent claims 4 and 8 in view of "Official Notice." See *In re Zurko*, 258 F.3d 1379, 1386 (Fed. Cir. 2001) (requiring an Examiner to "point to some concrete evidence in the record" to support a finding based on common knowledge). Moreover, if the Examiner is relying upon personal knowledge as the basis for the allegation of "Official Notice," the Examiner must provide an affidavit to support the alleged personal knowledge in the next Office Action. 37 C.F.R. § 1.104(d)(2).

In the absence of proper documentary support, the Examiner has improperly relied upon Official Notice in rejecting dependent claims 4 and 8, and the rejection thereof is therefore improper and should be withdrawn.

#### **B. CLAIM 10**

The Examiner has rejected claim 10 under 35 U.S.C. § 103 as allegedly being unpatentable over Bartholomew in view of Petras, further in view of U.S. Patent No. 7,308,413 to Tota et al. ("Tota"). This rejection is improper and should be withdrawn for at least the reason that the references relied upon, either alone or in combination, fail to disclose, teach, or suggest each and every feature of the claimed invention.

More particularly, for at least the reasons discussed above, Bartholomew and Petras, either alone or in combination, fail to disclose, teach, or suggest at least the feature of "remote content review/control site allowing a reviewing authority that operates the remote content review/control site to . . . view a real-time stream of each multimedia work in the catalog, wherein the reviewing authority must approve each multimedia work made available for public access," as recited in independent claim 1, for example. Tota fails to cure at least this deficiency of the combination of Bartholomew and Petras.

Accordingly, for at least the foregoing reasons, Bartholomew, Petras, and Tota, either alone or in combination, fail to disclose, teach, or suggest each and every feature of

independent claim 1. Independent claim 9 includes features similar to those set forth in independent claim 1. Dependent claim 10 depends from and adds features to independent claim 9. Thus, the rejection of this claim is improper and should be withdrawn for at least the foregoing reasons.

#### **NEW CLAIMS**

Dependent claims 12-xxx, which have been newly added, are allowable for at least the reason that they depend from and add features to one or more of independent claims 1, 5, and 9. Additionally, none of Bartholomew, Petras, and Tota, either alone or in combination, disclose, teach, or suggest several of the features recited in the newly added dependent claims. By way of example, none of the references relied upon, either alone or in combination, disclose, teach, or suggest at least the feature reciting that "the reviewing authority that operates the remote content review/control site includes a cable television company," as recited in dependent claim 14, for example. Various other reasons supporting the patentability of the claimed invention may exist, however, and the fact that Applicants do not address each such reason at this time should not be construed as an admission that the features are present in the references relied upon.

## CONCLUSION

Having addressed each of the foregoing rejections, it is respectfully submitted that a full and complete response has been made to the outstanding Office Action. As such, the application is in condition for allowance. Notice to that effect is respectfully requested.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

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Respectfully submitted,

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